

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**CLALLAM COUNTY
OFFICE OF THE HEARING EXAMINER**

IN RE:
CONDITIONAL USE PERMIT HEARING
FOR OLYMPIC SYSTEMS PROPERTIES
FILE NO. CUP2021-00005

No. ECL2021-00019, CUP2021-00005
CITY OF PORT ANGELES'S
PREHEARING BRIEF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

	Page
I. INTRODUCTION	3
II. ARGUMENT	3
A. THE APPLICATION MUST BE EVALUATED IN THE CONTEXT OF REGIONAL SOLID WASTE PLANNING.	3
B. THE PROPOSED TRANSFER STATION IS PROHIBITED BY THE SOLID WASTE MANAGEMENT PLAN	5
C. THE APPLICATION IS INCONSISTENT WITH THE INTERLOCAL AGREEMENT BETWEEN THE CITIES OF PORT ANGELES AND SEQUIM AND THE COUNTY	5
D. THE APPLICATION DOES NOT MEET THE CRITERIA IN CLALLAM COUNTY CODE 33.27.040 FOR A CONDITIONAL USE PERMIT	8
1. The Application is Inconsistent with the Comprehensive Plan	8
2. The Application is Inconsistent with the County’s Zoning Code	9
3. The Application is Inconsistent with Land Uses Within the Zoning District Where It Is Located and in the Vicinity of the Property	10
4. The Application’s Proposed Transfer Station Will Unreasonably and Adversely Impact Surrounding Land Uses.....	11
III. CONCLUSION.....	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14

I. INTRODUCTION

The City of Port Angeles (“City”) supports the County’s recommendation to deny Olympic Systems Properties’ application for a conditional use permit for a transfer station, CUP No. 2021-00005 (“Application”).¹ The Application should be denied on multiple grounds. The proposed use will impact the handling of solid waste in the region in direct contravention of regional long-term solid waste planning, including the County’s Solid Waste Management Plan, the County’s Comprehensive Plan, and the Interlocal Agreement Regarding Regional Solid Waste Export and Transfer System Cooperation and Implementation, an agreement to which the County, City of Port Angeles, and City of Sequim are all parties. In addition, the proposed use is inconsistent with the low nuisance, low intensity industrial use required for the site, and will result in odor and aesthetic impacts, impacts to the surrounding land uses including the Olympic Discovery Trail, and traffic impacts, which have not been adequately disclosed or evaluated. The transfer station is not allowable under the criteria for a conditional use permit provided by the Clallam County Code.²

II. ARGUMENT

15
16

A. The Application Must Be Evaluated In The Context of Regional Solid Waste Planning.

17
18
19
20

While this matter comes before the hearing examiner on a private entity’s conditional use permit application, the permitting of solid waste handling facilities in the State of Washington is heavily regulated and is not left to the vicissitudes of private enterprise. For over a century, the U.S. Supreme Court has recognized that solid waste collection and disposal are core

21
22

¹ The City is also submitting this brief as additional comments on the SEPA MDNS.

23
24
25
26

² In April 2005, the City and Waste Connections of Washington (WCI) entered into a Services Agreement. Under that Services Agreement, WCI agreed to design, develop, construct and operate the regional transfer station located in the City of Port Angeles for the full twenty year term of the Services Agreement. In early 2021, the City determined it was in the public’s best interest to terminate the Services Agreement and assume operations of the regional transfer station. On March 18, 2021, the City notified WCI of the City’s intent to terminate the Services Agreement. On November 12, 2021, Olympic Systems Properties, an entity affiliated with WCI, submitted the current Application for a conditional use permit to construct a new transfer station in Carlsborg.

1 responsibilities of local governments. *E.g., California Reduction Co. v. Sanitary Reduction Works*,
2 199 U.S. 306 (1905); *Gardner v. Michigan*, 199 U.S. 325 (1905). The Washington Supreme Court
3 has similarly held:

4 The handling and disposal of solid waste is a governmental function. RCW
5 70.95.020 provides that while private entities may contract with local government
6 for solid waste handling, the primary responsibility is that of the local government.

7 *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 40, 873 P.2d 498 (1994) (private disposal site
8 must be evaluated as public facility).

9 Consistent with this longstanding precedent, the legislature grants all Washington counties
10 authority to establish a system or systems of solid waste handling for their unincorporated areas
11 and for those cities participating in the County’s solid waste management planning. RCW
12 36.58.040 (counties); RCW 35.21.130 (cities). Each county manages its solid waste handling
13 system, in part, through a comprehensive solid waste management plan. *Id.*; chapter 70A.205
14 RCW. Clallam County has followed the Legislature’s directives and committed to a County-wide
15 solid waste management program, both in its contracts and its plans, including the recent Clallam
16 County Solid Waste Management Plan (“SWMP”) dated May 2021. [http://www.clallam.net/
17 publicworks/docs/SWMPFinalDraft202105.pdf](http://www.clallam.net/publicworks/docs/SWMPFinalDraft202105.pdf); Exhibit 19.³

18 In addition to the SWMP, the County, along with the City of Port Angeles and the City of
19 Sequim, is a party to the Interlocal Agreement Regarding Solid Waste Export and Transfer System
20 Cooperation and Implementation (“ILA”). Exhibit 18. As explained further below, the SWMP
21 and the ILA together provide that the existing regional solid waste export and transfer system will
22 be the only designated transfer and export system in the county east of Lake Crescent, and would
23 prohibit the operation of the transfer station. Given the comprehensive regulatory framework over
24 solid waste that exists in Clallam County, the Application must be evaluated within that regional
25 framework.

26 ³ The City notes that the version of the SWMP currently available on the County’s website as
Exhibit 19 does not appear to be a complete version of the document.

1 **B. The Proposed Transfer Station Is Prohibited by the Solid Waste Management Plan**

2 The Application directly conflicts with, and attempts an end-run around, the County’s
3 adopted SWMP. The SWMP does not authorize any new solid waste transfer station in the
4 County. *See* SWMP at C-2 (“No new public facilities are proposed in this Plan.”); SWMP (Ex.
5 19) Section 2.4 & Figure 2-4 (identifying existing solid waste facilities in eastern Clallam County
6 as the Port Angeles Regional Transfer Station and Blue Mountain Transfer Station). Any new
7 public or private transfer or disposal facility would require a revision to the SWMP. *See* SWMP
8 (Ex. 19) Section 1.7 (describing process and schedule for updating SWMP). The SWMP
9 specifically provides that the waste transfer system in Clallam County is “working well” and the
10 Plan “recommends continuing that system.” SWMP (Ex. 19) at ES-2. With respect to waste
11 disposal, the SWMP notes “perhaps the most important recommendation is to begin the process in
12 2023 for a new waste export and disposal contract for the Regional Transfer Station.” SWMP (Ex.
13 19) at ES-2. The City will continue to operate the Regional Transfer Station and has already
14 converted to a new waste export and disposal contract.

15 The Application attempts to circumvent the SWMP through a land use permitting process,
16 but the law does not allow such evasion. Because the proposed transfer station is inconsistent with
17 the SWMP, the County Health Department is without authority to authorize a solid waste handling
18 permit for such a facility. RCW 70A.205.130 (“Every permit issued by a jurisdictional health
19 department under RCW 70A.205.125 shall be reviewed by the department [of Ecology] to ensure
20 that the proposed site or facility conforms with . . . (2) The approved comprehensive solid waste
21 management plan.”). The SWMP does not allow the County to permit a new transfer station for
22 waste that is directed by law to the regional system.

23 **C. The Application is Inconsistent With the Interlocal Agreement Between The Cities
24 of Port Angeles and Sequim and the County**

25 The SWMP incorporates the 2007 ILA between the City of Port Angeles, City of Sequim
26 and the County. *See* SWMP (Ex. 19) at 1-3, Section 1.5 (noting SWMP operates in a framework
including the ILA); SWMP at 4-1 (noting “primary local rules and regulations addressing the

1 transfer facilities are included in Chapter 41.10 of Clallam County’s code and in an interlocal
2 agreement. An interlocal agreement (ILA) has been executed between Clallam County, the City
3 of Port Angeles, and the City of Sequim for cooperation and implementation of the regional solid
4 waste transfer and export system”); SWMP at 10-10 (“This ILA defines the roles and
5 responsibilities of the signatories to provide for Regional Solid Waste Export and Transfer System
6 facilities and services; promote the health, safety and welfare of the County’s residents; and protect
7 the natural environment in the County”); SWMP Appendix A; SWMP at 10-5, 10-7, 10-8
8 (referencing ILA).

9 This long-term interlocal agreement addressed the need to plan for solid waste management
10 on a regional level and addressed closure of the City’s regional landfill. See ILA (Exhibit 18). Of
11 particular note is the ILA’s commitment that the Regional Solid Waste Export and Transfer System
12 facilities will be located at the current site of the Port Angeles Landfill and will be utilized by the
13 City of Port Angeles, City of Sequim, and the County and private solid waste collection companies
14 that serve the City and unincorporated area of the County from Lake Crescent eastward.

15 That Agreement provides for a 20-year term, at least through 2027. Under the ILA, the
16 County has specific obligations at Section 2 including that:

17 A. . . . The Regional Solid Waste Export and Transfer System will be the only
18 designated Export and transfer System in the County East of Lake Crescent for
19 the term of this Agreement.

20 B. Process consideration of amendments to the County’s zoning code, solid
21 waste facility permitting process ordinance and other applicable ordinances to
22 prohibit solid waste transfer and export facilities that are not consistent with the
23 Plan and to designate the Regional Solid Waste Export and Transfer System as
24 the County’s solid waste system consistent with the Plan and RCW 36.58.040,
25 to the extent permitted by law

26 E. [The County] Shall not construct or have constructed any municipal solid
waste and transfer station in the eastern part of Clallam County without
approval of the Joint Solid Waste Advisory Board.

The Application proposes a transfer station that would violate the ILA. The ILA requires
that the Regional Solid Waste Export and Transfer system be “the only designated Export and

1 transfer System in the County East of Lake Crescent” for the term of the ILA and prohibits the
2 County from constructing or having constructed any municipal solid waste and transfer station in
3 the eastern part of Clallam County without approval of the Joint Solid Waste Advisory Board. *See*
4 ILA at Section 2. The transfer station identified in the Application has not been approved by the
5 JSWAB and would violate the ILA.

6 Further, these contracts provide for a directed waste stream (or, flow control). In addition
7 to helping governments assure they are meeting recycling and hazardous waste disposal
8 requirements, flow control provides a steady stream of revenue to public solid waste system
9 owners in the form of tipping fees. This revenue funds numerous mandatory programs, including
10 the costs associated with closed landfills (both actively managed public facilities and abandoned
11 private sites). Additionally, and importantly, a single regional transfer station can operate more
12 efficiently and economically than two competing facilities. Permitting two facilities would
13 ultimately increase the costs of solid waste collection and disposal in eastern Clallam County. The
14 SWMP specifically identifies these issues, including capital costs for the environmental controls
15 at the old City Landfill.

16 Solid waste collection is an essential function of government, and solid waste planning
17 must be driven by the best interests of the community and efficient provision of services. *See*
18 *Weyerhaeuser*, 124 Wn.2d at 40. The efficient and economical handling of solid waste is a vital
19 interest of government with a fundamental relationship to the health, safety, and wellbeing of the
20 entire community. *Id.* State law does not permit the number and location of solid waste facilities
21 to be left to the whims of entrepreneurs. Here, the governments of the County, City of Port
22 Angeles and City of Sequim have recognized that the current solid waste facilities adequately serve
23 Clallam County.

1 **D. The Application Does Not Meet the Criteria in Clallam County Code 33.27.040 for a**
2 **Conditional Use Permit**

3 In order to issue a conditional use permit, the hearing examiner must find that (1) the
4 proposed use is consistent with the spirit and intent of the County’s comprehensive plan; (2) the
5 use is consistent with the County’s zoning code; (3) the use is consistent with land uses in the same
6 zoning district and in the vicinity of the subject property; and (4) that the proposal will result in
7 “no unreasonable adverse impact on the surrounding land uses which can not be mitigated through
8 the application of reasonable conditions.” CCC 33.27.040(1). The Applicant bears the burden of
9 demonstrating these criteria are met. CCC 33.27.110. The Hearing Examiner should deny the
10 Application because it does not meet these criteria.

11 **1. The Application is Inconsistent with the Comprehensive Plan**

12 Clallam County Code 33.27.040(1)(a) requires that conditional use permits be consistent
13 with the Clallam County Comprehensive Plan. The City agrees with the County that the proposed
14 transfer station is inconsistent with the County’s Comprehensive Plan and will not repeat all those
15 arguments here. *See* Staff Report to the Hearings Examiner – Conditional Use Permit – CUP2021-
16 00005 (“Staff Report”) (Exhibit 1).

17 The Comprehensive Plan incorporates the Solid Waste Management Plan (SWMP). *See*
18 Clallam County Resolution 82 (2018), Finding 14, [https://www.clallam.net/LandUse/documents/
19 g2018_082.pdf](https://www.clallam.net/LandUse/documents/g2018_082.pdf) (noting County’s comprehensive plan and GMA goals are implemented through a
20 number of other plans including the solid waste management plan); *Id.* at Finding 36, (listing
21 SWMP as part of County capital facility planning efforts); Clallam County Solid Waste
22 Management Plan (May 2021), [http://www.clallam.net/publicworks/docs/SWMPFinalDraft
23 202105.pdf](http://www.clallam.net/publicworks/docs/SWMPFinalDraft202105.pdf), Section 1.5 (SWMP functions “within a framework created by other plans and
24 programs” including the Comprehensive Plan). As discussed above, the Application directly
25 conflicts with the SWMP, which does not authorize an additional solid waste transfer station in
26 the County.

1 The Application is also inconsistent with the spirit and intent of the comprehensive plan's
2 vision for the Carlsborg UGA. The Clallam County Comprehensive Plan provides for the purposes
3 of land use zones within the Carlsborg UGA, and specifically provides that the purpose of
4 Carlsborg Industrial zoning is "to allow for low nuisance, low intensity industrial uses." CCC
5 31.03.350(9)(b)(vi). The odor and aesthetic impacts of a transfer station do not meet this criterion.
6 The transfer station will involve a significant amount of traffic including heavy truck traffic. A
7 transfer station is a high nuisance use presenting a variety of undesirable impacts and public safety
8 issues which are inconsistent with the vision of the Carlsborg UGA set forth in the County's
9 comprehensive plan.⁴

10 **2. The Application is Inconsistent with the County's Zoning Code**

11 Clallam County Code 33.27.040(1)(b) provides that proposed conditional uses must be
12 consistent with Title 33 of the County's Code. Since 1995, the County's zoning has allowed a
13 "transfer facility" as an industrial use. CCC 33.03.010. But a "transfer facility" does not include
14 a solid waste transfer station. See CCC 33.03.010(47) (defining industrial use as "any premises
15 devoted primarily to the manufacturing of finished or semi-finished products, and the processing
16 of materials. This definition includes accessory facilities such as but not limited to storage
17 facilities, transfer facilities, warehousing, heavy vehicular storage and repair, log storage milling
18 and sorting."). A municipal waste transfer station is not a "premises devoted primarily to the
19 manufacturing of finished or semi-finished products and the processing of materials," and it is not
20 an "accessory" facility. CCC 33.03.010(47). Further, at the time this use was added to the

21 _____
22 ⁴ The hearing examiner may take judicial notice of the following sources which illustrate a variety
23 of impacts and public safety issues at transfer and recycling centers across the country. See, e.g.,
24 Dangerous Working Conditions Uncovered in the Recycling Industry, [https://www.wnyc.org/
25 story/dangerous-working-conditions-uncovered-recycling-industry/](https://www.wnyc.org/story/dangerous-working-conditions-uncovered-recycling-industry/); Everett fire strikes recycling
26 center; no injuries reported, [https://www.seattletimes.com/seattle-news/smoke-from-everett-fire-
can-be-seen-for-miles/?utm_source=email&utm_medium=email&utm_campaign=
article_left_1.1](https://www.seattletimes.com/seattle-news/smoke-from-everett-fire-can-be-seen-for-miles/?utm_source=email&utm_medium=email&utm_campaign=article_left_1.1); Massive 3-Alarm Fire Sends Smoke Towering Over Ontario Area,
<https://ktla.com/news/local-news/fire-sends-smoke-towering-over-ontario-area/>; N.J. Recycling
Plant Employee Killed by Forklift, [https://www.waste360.com/safety/nj-recycling-plant-
employee-killed-forklift](https://www.waste360.com/safety/nj-recycling-plant-employee-killed-forklift); Minneapolis Recycling Plant Catches Fire,
<https://www.waste360.com/recycling/minneapolis-recycling-plant-catches-fire>.

1 County's zoning in 1995, the Port Angeles landfill was in operation and there was no prospect of
2 it being discontinued. Therefore, it is highly unlikely that the "transfer facility" language was
3 intended to encompass a municipal solid waste transfer station. At that time, all solid waste went
4 to local landfills, switching to the transfer station model of handling solid waste would have been
5 a huge alternation of the existing system, and that alternation was not within anyone's
6 contemplation.

7 **3. The Application is Inconsistent with Land Uses Within the Zoning District**
8 **Where It Is Located and in the Vicinity of the Property**

9 Clallam County Code 33.27.040(1)(c) requires that proposed conditional uses must be
10 consistent "with land uses within the zoning district in which it is located and in the vicinity of the
11 subject property." The proposed transfer station is inconsistent with land uses in the immediate
12 vicinity, in particular, the Olympic Discovery Trail.

13 The Olympic Discovery Trail is a significant recreational and multi-modal transportation
14 asset enjoyed by community members throughout Clallam County. The mitigation proposed is
15 insufficient to address the impacts of locating a transfer station and its attendant odor and traffic
16 issues immediately adjacent to an outdoor recreation area. These uses are plainly inconsistent.
17 Locating a transfer station in such proximity to an important outdoor recreation landmark would
18 interfere with the community's use of the Olympic Discovery Trail.

19 The City has a strong interest in maintaining the Olympic Discovery Trail as a regional
20 recreational asset. The City maintains a portion of the trail within City limits, has entered into an
21 MOU with the Peninsula Trails Coalition, and allocates \$593,000 in capital costs to the Olympic
22 Discovery Trail. The City's own comprehensive plan repeatedly recognizes the importance of the
23 Olympic Discovery trail to the community. *See* City of Port Angeles Comprehensive Plan (2019),
24 <https://www.cityofpa.us/DocumentCenter/View/6689/2019-Comprehensive-Plan>, at 1-10
25 (introduction noting that "Port Angeles' trail system builds on the Olympic Discovery Trail and
26 miles of local trails, contributing to the local quality of life by inviting community residents and

1 visitors of all ages to wander and explore”); Policy P-10A.08 (“Continue to participate as a partner
2 in the extension of the Olympic Discovery Trail through the City to the western City limits”);
3 Action A-4.01 (noting as an action item “Design and develop the following segments of the
4 Olympic Discovery Trail”).

5 **4. The Application’s Proposed Transfer Station Will Unreasonably and**
6 **Adversely Impact Surrounding Land Uses**

7 In order to issue a conditional use permit, Clallam County Code 33.27.040(1)(d) requires
8 the hearing examiner to find that there is “no unreasonable adverse impact on the surrounding land
9 uses which can not be mitigated through the application of reasonable conditions.”

10 In addition to the negative impacts identified above to the Olympic Discovery Trail, the
11 transfer station is deleterious to citizens and businesses in eastern Clallam County. The transfer
12 station would also adversely affect a nearby aquifer. The traffic, odor, and environmental impacts
13 of the proposed transfer station support denial of the permit.

14 And as mentioned above, the proposed transfer station will also significantly increase the
15 costs of solid waste transport and disposal on the peninsula. Citizens of this County know well
16 the costs associated with environmental cleanup. The closure of the City’s old regional landfill
17 adjacent to the Strait of Juan de Fuca came with substantial cost. *See* SWMP at Table 1-1 (noting
18 priority of obtaining state and federal grant funding for corrective actions at Port Angeles Landfill).
19 Waste had been received at that landfill for decades from throughout the County—not just from
20 the City of Port Angeles. SWMP at 5-2 (“The Port Angeles Landfill was originally a regional
21 dump site purchased by the City of Port Angeles in 1947. Through 2006, this landfill provided
22 disposal services to residential, commercial, and industrial customers throughout Clallam
23 County.”). The cost of that ongoing remediation is supported by the fees at the Regional Transfer
24 Station. SWMP at 5-2 (“Reserve accounts for closure and post-closure costs for the closed landfill
25 are being funded by a portion of the solid waste tipping fee” and that certain “remedial actions
26 were financed by a bond that is being paid from tipping fee revenues at RTS and the Blue Mountain

1 Transfer Station.”). Diversion of waste and attendant fees would directly impact the regional goal
2 and commitment to that remediation effort.

3 Finally, the Application fails to provide information relating to mitigation measures that
4 would reduce impacts to a level of non-significance. Specifically, the duration, severity, and
5 cumulative odors from the project in addition to existing uses in the area should be adequately
6 described and mitigated, but they are not. The project proponents submitted an EPA publication
7 (Waste Transfer Stations: A Manual for Decision-Making), which lists mechanical systems such
8 as water misting and deodorization systems as an odor mitigation tool. There are additional
9 ventilation filtration systems that exist for similar purposes. But not enough information is
10 provided by the Applicant to demonstrate how an enclosed structure can adequately control odor
11 impacts. An enclosed structure may not go far enough as a mitigating condition. An analysis of
12 any mechanical means to reduce odors should be provided for analysis.

13 III. CONCLUSION

14 The transfer station proposed in the Application is inconsistent with the SWMP and the
15 ILA, critical elements of the region-wide planning process regulating solid waste; this context
16 cannot be ignored in evaluating this Application. Further, the Application fails to meet the criteria
17 for a conditional use permit. The Application should be denied.

18 DATED this 12th day of July, 2022.

19 FOSTER PEPPER P.L.L.C.

20 

21 P. Stephen DiJulio, WSBA #7139

22 Jason Donovan, WSBA #40994

23 Andrea Bradford, WSBA #45748

24 1111 Third Avenue, Suite 3000

25 Seattle, Washington 98101-3299

26 Telephone: (206) 447-4400

Email: steve.dijulio@foster.com

j.donovan@foster.com

andrea.bradford@foster.com

Attorneys for the City of Port Angeles

1 **CERTIFICATE OF FILING**

2 I, P. Stephen DiJulio, am a principal at Foster Garvey P.C. and hereby certified that I caused this Prehearing
3 Brief to be filed electronically on Anastasia White, Clerk for the Hearing Examiner (the Clallam County Department
4 of Community Development), awhite@co.clallam.wa.us, Donella Clark, dclark@co.clallam.wa.us, with electronic
5 copies to Chief Civil Deputy Prosecuting Attorney, Elizabeth Stanley, estanley@co.clallam.wa.us; the Applicant's
6 counsel, Alexander M. Wu, alex.wu@hcmp.com and Stephen H. Roos, steve.roos@hcmp.com; and counsel for A-M
7 Systems LLC and Arthur Green, Tom Ehrlichman <tom@dykesehrlichman.com>.

8 Signed, July 12, 2022:

9 

10 _____
11 P. Stephen DiJulio, WSBA #7139
12 Attorneys for the City of Port Angeles